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October 8, 2003

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The State Bar of California
Attn: Bill Brauer, Esquire
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Secretary
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Re: Request for Proposal, Lawyers Assistance Program

Dear Mr. Brauer:

Treasurer
John Gray, Esq.
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The Other Bar, Inc. has received a request for proposal from the State Bar of California for services in maintaining and further developing its Lawyer Assistance Program. The Other Bar, is a non-profit corporation that currently operates a statewide network of abstinence based person support groups for legal professionals, operates a statewide toll free hotline and provides MCLE for alcohol, stress, and substance abuse. The Other Bar Inc. has provided these services for over 20 years. I am currently on the executive committee of the Board of Directors and am writing this letter on behalf of The Other Bar, Inc.

Past President
Richard M. Ewaniszyn, Esq.
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The RFP requires that a proposed bidder notify the State Bar of California of any error, ambiguity, conflict discrepancy or omission in the RFP. The RFP also requires that a proposer who believes that one or more of the requirements is onerous or unfair, or unnecessarily precludes less costly or alternative solutions may submit a written request that the RFP be changed. According to the RFP the request must be received by the State Bar within 3 days of the receipt of the RFP, but in no event later than 5 days before the deadline for submitting proposals. Our Board has scheduled a meeting for October 11, 2003 and may supplement this request for corrections after that meeting.

The RFP does not contain any language specifying whether this RFP is for an independent contractor or otherwise. Historically all of the prior RFP's for the LPAP have specifically stated that an independent contractor agreement was required. As you know The Other Bar Inc. cannot be an employee of the State Bar.

The RFP also provides that a proposal may be rejected if it fails to meet a material requirement of the RFP. A deviation is material to the extent that a proposal is not in substantial accord with the RFP. This language is appropriate. However, the RFP goes on to state that "immaterial deviations may cause a bid to be rejected." This language is ambiguous and creates a discrepancy with the language specifically defining material deviations. I would suggest that the "immaterial deviation" language be stricken.

The RFP contains a section defining and explaining the "Evaluation Process and Highest Scored Proposals." The RFP states that "subject to the State Bar's right to reject any or all proposals, the HSP will be awarded the contract." However, the protest procedure allows for a protest only if "the proposer has submitted a proposal that it believes is the lowest cost responsible proposal, under the criteria set forth above." I would suggest that the language in the protest procedure be changed to allow for a protest if the proposer believes it to be the Highest Scored Proposer under the criteria set forth in the RFP. Otherwise, the Highest Scored Proposer has no right to protest, but the lowest cost responsible proposal does, even if it presents the lowest scored proposal. The RFP as presently drafted appears to be ambiguous.

The article entitled "Statement of Work" raises some concerns. In paragraph (A)(1) it suggest that the services requested will require between 300-400 hours per month of services by network peer consultants. It is difficult to imagine how a 24-hour statewide hotline could be staffed with only 300 to 400 hours per month. It is inconceivable that all of the services requested under the RFP could be accomplished in 300 to 400 hours per month. The Other Bar currently expends 600 to 700 hours per month with our paid consultants. Several hundred volunteer lawyers and Other Bar Board members cumulatively expend an additional 600 to 700 hours per month performing these services. Therefore, we believe that based upon our past experience that these services will require in excess of 1000 hours per month.

The RFP section (A)(1) also requires that in addition to other services the proposer should be expected to "provide callers with assistance (including arranging transportation) in getting to abstinence-based peer support group meeting, to facilitate LAP meetings, and/or to treatment." While, The Other Bar seeks volunteer attorneys to assist with the transportation to and

from meetings, it has never been mandated . There are 35 Other Bar meetings in the State of California, thousands of AA and other 12-step meetings available through out the state and dozens of new LAP meetings. It would be extremely onerous to require the service providers to be required to arrange for the transportation needs of hundreds of lawyers in the state of California on a daily or even weekly basis. By including this as a requirement in the RFP and contract the successful bidder and the State Bar of California may be exposed to liability if automobile accidents occur, or if members fail to meet the attendance requirements of any terms and conditions of any State Bar Court or LAP. In addition, pursuant to the Business and Professions §6230 et seq. certain members of the LAP are entitled to absolute confidentiality. By requiring the proposer to provide transportation might unnecessarily jeopardize this confidentiality. We suggest that this language be omitted from the proposal. Please note that Article IV, Section C requires the contractor to provide for all transportation. This would be extremely expensive and unwise.

Article III (A)(2), provides:

“Provide experienced peer consultants to provide immediate response to callers requesting brief counseling services from the LAP, including, when appropriate referring callers to the LAP approved therapists in the callers’ local community and reporting the referral to LAP.”

This language is unintelligible, onerous and would in some instances violate our duty of confidentiality. For instance, if caller contacted our hotline and requested assistance for a mental health, alcohol or drug problem. Our consultant would be expected to provide that caller with all of the resources that may be available to him or her. That would include a referral to the LAP, if appropriate. However, upon receipt of a confidential inquiry from a caller regarding their own mental illness or chemical dependency or that of a third person, our consultants would not be able to report the name of the referral to the LAP without violating our promise of confidentiality to the caller. We suggest that the RFP be amended to delete the duty to “report the referral to the LAP.”

Article II, Section (A)(4) requires that the proposer "recruit throughout the state and recommend to the LAP recovering attorneys to serve on the evaluation committee of the LAP." We suggest that the language be changed to require that the proposer recruit throughout the state and recommend to appropriate recovering attorneys that they volunteer to serve on the evaluation committees of the LAP. With the written consent of the recovering attorney the proposer would, if applicable, be able to recommend the recovering attorney to the LAP.

Article III, Section (A)(8) requires the monthly preparation of reports to be provided to the director of the LAP. However, it is onerous and unfair to condition "payment of services on State Bar receipt and reasonable approval of the report described in III (A)(8) and shall be made written within 30 days of receipt of that report and invoice." This requirement would require the proposer to provide services for 60 to 75 days without any payment whatsoever. This is an unfair burden to place upon any service provider. While the failure to submit reports may well be sufficient grounds to send a 30 day notice to terminate the contract, it is manifestly unfair to require the proposer to wait 60 to 75 days to determine if payment is actually going to be made. We suggest that the language set forth in III(B) be deleted and amended to read that: "Failure to submit reports and obtain reasonable approval of the report described in III(A)(8) after 10 days notice to the proposer, shall be grounds to terminate the contract pursuant Article IV (F)(2)."

Article III, Section (A)(8) is onerous and burdensome and may violate the callers confidentiality. There is also a discrepancy in the requirements in the report. The RFP provides that the "reports shall contain at a minimum, the following numbers for the prior month." The RFP then goes on to demand that the proposer must "specify the relationship of the caller to the member." We suggest that this language be deleted. The report further requires that the report include "results from each contact." This request is onerous and burdensome. There will be several hundred calls per month and it will unreasonable to expect the proposer to prepare a written report for each contact without substantially increasing the cost of this proposal. The proposer should not be required to reveal the identity of the caller or any clues as to the identity of the member. We suggest that this requirement be deleted in its entirety.

Article III, Section 8 also requires the report to identify the number of members being monitored during the aftercare phase of treatment by contractors' peer consultants. This language should be deleted because it is ambiguous. To the extent that the report requires the identity of these members, it violate their confidentiality. Because members from chemical dependancy are never cured, but their disease is only arrested, they are all essentially in the "aftercare phase of treatment."

Article III, Section 8 also requires that the number of members attending contractors abstinence-based peer support group meetings during the period covered. We currently have over 35 weekly meeting places throughout the State of California and only 7 consultants. Each meeting is autonomous, no Other Bar meeting takes attendance and there is no practical way for our consultants to attend and count the members present at each meeting. Some of the meeting places would absolutely refuse to provide this information to our consultants if they knew it was being monitored or being provided to the State Bar. We suggest that this requirement be deleted in its entirety.

Article III, Section 8 also requires that the proposer maintain appropriate administrative and budgetary records. The State Bar should have the ability to audit the financial records pertaining to the use of the contracted for funds. However, to the extent that this clause is intended to allow the State Bar the opportunity to inspect our internal administrative records, membership lists, consultant evaluation, personnel files or contact information, this request unacceptable. We suggest that the language be deleted and amended as follows:

"Maintain appropriate financial and budgetary records regarding the use of State Bar funds. Proposer shall submit to reasonable State Bar audits of these financial records, at no expense to the contractor."

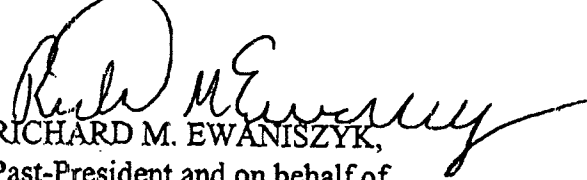
Article III, Section C provides for a one year term with the State Bar. We are requesting that the term be one year periods starting January 1, 2004 renewable for one year periods at December 31, 2004 and 2005, if it is determined by the State Bar to continue the Pilot Program.

Article IV, Section (F)(2) provides for termination by the State Bar upon 30 days written notice to the vendor in the event the vendor is in default under any of the provisions. We suggest that language be added to allow an opportunity to cure the default upon reasonable terms and conditions.

Article IV, Section G defines ownership of documents. The Other Bar, Inc. has been in existence for over 20 years, during that time it has prepared materials, logos, trademarks, substantial work product, trade secrets and confidential information. This section as presently drafted is overbroad, onerous and unfair.

Thank you for taking time to consider our concerns. We look forward to working with you on this matter. If I can be of further assistance please feel free to contact me at any time.

Very truly yours,


RICHARD M. EWANISZYK,
Past-President and on behalf of
The Executive Committee of
The Other Bar, Inc.